IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 25190 of 2003(W)

PETITIONER:

KOLLAM HOTEL & TEA SHOP WORKERS
UNION, REGD.NO.204/78 (INTUC),
JETTY ROAD, KOLLAM REPRESENTED BY ITS
GENERAL SECRETARY, G. JAYAPRAKASH.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

RESPONDENTS:
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1. THE PRESIDING OFFICER,
LABOUR COURT, KOLLAM.

2. PONNAMMA, VAYALIL PUTHEN VEEDU,
CANTONMENT NORTH, KOLLAM.

BY ADV. SRI.T.R.ASWAS
BY GOVERNMENT PLEADER SMT.M.R.SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 20/09/2007, THE COURT ON 20/09/2007 DELIVERED THE

FOLLOWING:

APPENDIX
(WP(C) NO.25190 OF 2003)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Award dtd.21.12.98 passed by first respondent.

Ext.P2: Copy of judgment dtd.2.8.2001 of this Court in OP 326 of 2000.

Ext.P3: Copy of Award dtd.2.2.02 passed by first respondent in I.D.No.95 of 1990.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) No. 25190 of 2003

Dated this the 20th day of September, 2007

J U D G M E N T

The union representing the workman in I.D.No.95 of 1990 before the Labour Court, Kollam is the petitioner herein, who is challenging Ext.P3 award passed in that I.D. The issue referred for adjudication was "denial of employment to Sri.S.Pookunju, Tea Maker". After adjudication, the Labour Court found that the workman involved was unjustly denied employment. However, while granting relief, only compensation amounting to Rs.3378/- has been awarded to the workman. The petitioner's contention is that after having found that the workman was unjustly denied employment, the Labour Court ought to have ordered reinstatement with back wages. The petitioner therefore challenges Ext.P3 award to the extent it denies the relief of reinstatement with back wages to the workman involved in the industrial dispute.

2. I have considered the rival contentions in detail.

3. Lately, the Supreme Court has been taking the view that reinstatement with back wages cannot be held as an invariable rule in all cases of unjust dismissal or denial of employment and the Labour Court is empowered to assess the circumstances of each case and in appropriate cases, can order compensation in lieu of the reinstatement. In this case, the Labour Court had specifically addressed itself to that question and had stated thus in paragraph 13 of the award:

> "13. It has come out in evidence that the hotel run by 2nd management is a small establishment. According to MW1, she is conducting the hotel alone and there is no other employee. Even though she appears to be an unbelievable person, from the facts and Ext.M2 it is seen that this hotel is a small one and she may not be able to afford the employment of the workman at this long distance of time. The 2nd management is no doubt a poor lady and a balance has to be struck between her and the workman in this case. The argument of the learned counsel for the management that the claim is untenable in view of Ext.M1 does not hold good. That Claim Petition was

dismissed due to lack of evidence and there will be no inhibition to decide the Industrial Disputes irrespective of Ext.M1 order. So on a totality of all facts, I am of the view that an order or reinstatement with back wages will be unjust and inappropriate. The denial of employment can be treated as retrenchment without notice or notice pay and so a reasonable compensation can be allowed taking into account the past service of the workman. Even though Section 25F of the Industrial Disputes Act cannot be extended to this workman, the principle embodied therein can be applied and compensation can be computed accordingly. The version of the workman that he was having 7 years service as tea maker in the Baby Hotel can be accepted. The minimum monthly wages payable is stated by him as Rs.744/-. So taking Rs.372/- as the wages for 15 days yearly and adding Rs.744/- being the one month's wages in lieu of notice, the total amount of compensation works out as Rs.3378. He was denied employment on 18.2.1990. So the workman is entitled to interest at 9% per annum from that date. The claims for other benefits such as balance of minimum wages, leave salary etc. are not allowable as there is no evidence in

> those respects. The points are answered accordingly.
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> Hence an award is passed as follows:
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> The prayer for reinstatement of the workman in service with backwages is disallowed."

On going through the same, I am not satisfied that there is anything perverse in the said conclusion. Further, I find that the relief had been granted against the second management in the industrial dispute. The second management, although the wife of the first management, was not a party to the conciliation proceedings and was not a party in the reference order, she was only impleaded during the proceedings in the I.D. No relief could have been awarded against a person who was not a party in the conciliation proceedings or in the reference order without a valid amendment of the reference order. That being so, I doubt very much whether the second management could have been saddled with the liability at all. However, since the management had not chosen to challenge the award, I

am not going into that question now. However, while rejecting the contentions of the petitioner, I feel that, that point can also be taken into account.

In the above circumstances, I do not find any merit in this writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J.

W.P(C).NO. 25190 OF 2003

J U D G M E N T

DATED: 20-09-2007